# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

REBECCA DAVIS	)
Claimant	)
VS.	)
	) Docket No. 251,359
SOLOMON VALLEY MANOR	)
Respondent	)
AND	)
	)
EMC INSURANCE COMPANY	)
Insurance Carrier	)

# ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 23, 2000.

#### ISSUES

Claimant appeals the ALJ's finding that claimant failed to prove accidental injury arising out of and in the course of her employment.

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant testified she injured her back while helping move a patient, Clifford Thomas, on January 13, 2000. Claimant testified the symptoms became worse while later assisting with another patient on the same shift. According to claimant's deposition testimony, she was working with Helen Melius at the time. Although Helen Melius did not know what claimant might have done on her own, she testified claimant did not assist her with any lifting that evening.

As claimant's counsel points out, there are inconsistencies in Ms. Melius' testimony. After testifying that claimant did not assist her with any lifting, she later testified claimant did assist with another patient named Daisy. But Ms. Melius consistently testified claimant did not assist with Mr. Thomas. Ms. Melius testified that Mr. Thomas was guite heavy, and

they had a special apparatus to assist with lifting him. Claimant testified she did not know whether there was special equipment to assist with Mr. Thomas.

The Board generally defers to the ALJ's evaluation of the credibility of witnesses who testify before the ALJ. In this case, claimant testified before the ALJ. Several other witnesses, including Ms. Melius, testified by deposition. The ALJ did not believe claimant's version of the events. Giving some weight to the ALJ's evaluation of credibility and considering other testimony inconsistent with claimant's testimony, the Board agrees with and affirms the Order by the ALJ denying preliminary hearing benefits.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Bruce E. Moore on March 23, 2000, should be, and the same is hereby, affirmed.

# IT IS SO ORDERED.

Dated this	day of May 2000.

### BOARD MEMBER

c: Jeffrey E. King, Salina, KS James M. McVay, Great Bend, KS Bruce E. Moore, Administrative Law Judge Philip S. Harness, Director